IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1044 OF 2005

A.S.H.Sayed).. Petitioner

Versus

Larsen & Toubro Ltd. and others).. Respondents

Mr.V.P.Patil for the Petitioner.

Mr.K.M.Naik with Mr.S.P.Salkar for Respondent No.1.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 14TH JULY 2005

P.C.:

. This Petition has been filed against the order dated 5th July 2004 passed by the 4th Labour Court, Mumbai dismissing the application filed under Section 33-C(2) of the Industrial Disputes Act, 1947. The application has been filed to claim bonus paid to other employees while the Petitioner was under suspension. Reliance is placed on the judgment of the Gujarat High Court in the case of *Project Manager, Ahmedabad Project O.N.G.C.* vs. *Shri Kumar Sahegal*, **1995 I LLJ 863**. It is submitted that the Labour Court had erred in relying on the judgment of this Court in *Motor Industries Co. Ltd.* vs. *Popat Murlidhar Patil & others*, **1997 I CLR 169**. In the case of *Kumar Sahegal* (supra), the delinquent employee had been exonerated of the charges levelled

against him and was reinstated. Bonus had been claimed for the period during which the employee was under suspension before he was reinstated. Accordingly, the Gujarat High Court held that such an employee who has been exonerated of the charges levelled against him is entitled to bonus even for the period when he was under suspension.

2. The facts in the judgment of this Court in *Motor Industries* (supra) is similar to the present case. In *Motor Industries* (supra), the worker was under suspension pending enquiry when he was being paid subsistence allowance including bonus for the said period. This Court has held that bonus for this period was not payable since subsistence allowance does not amount to remuneration. There is no dispute that the Petitioner has been dismissed after holding an enquiry. A Reference is pending adjudication in respect of his termination from service. In the event the Petitioner succeeds in the Reference, he would be entitled to all his dues in accordance with law, payable during the period when he was kept out of service.

3. Writ Petition disposed of accordingly.